

Senate Bill 415

By: Senators Mullis of the 53rd, Shafer of the 48th, Murphy of the 27th, Douglas of the 17th, Unterman of the 45th and others

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, so as to provide for the regulation of private emergency warning point to multipoint systems by the Public Service Commission; to define certain terms; to provide for audits; to provide for immunity from liability for failure to deliver information over an emergency warning point to multipoint system; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by revising Code Section 46-1-1, relating to definitions, exclusions, and Georgia Forest Products Trucking Rules, as follows:

"46-1-1.

As used in this title, the term:

(1) 'Carrier' means a person who undertakes the transporting of goods or passengers for compensation.

(2) 'Certificate' means a certificate of public convenience and necessity issued pursuant to this title.

(3) 'Commission' means the Public Service Commission.

(4) 'Company' shall include a corporation, a firm, a partnership, an association, or an individual.

(5) 'Electric utility' means any retail supplier of electricity whose rates are fixed by the commission.

(5.1) 'Emergency warning point to multipoint system' means an emergency warning point to multipoint, geographic messaging system that is:

(A) Owned, controlled, or offered by a private company, individual, firm, partnership, or association; and

(B) Operated in whole or in part in this state utilizing:

(i) The FM 57 kHz Radio Broadcast Data System standard and a codeable, programmable receiver; or

(ii) The FM broadcast band generally and a codeable, programmable receiver.

(5.2) 'Emergency warning point to multipoint system provider' means a private company providing emergency warning point to multipoint system services to the public.

(5.3) 'Emergency warning point to multipoint system services' means the provision of an emergency warning point to multipoint system to the public including but not limited to the wireless addresses for delivery, testing, and monitoring over the FM broadcast band.

(5.4) 'Exempt rideshare' means:

(A) Government endorsed rideshare programs;

(B) Rideshare programs in which a rideshare driver seeks reimbursement for, or the rideshare participants pool or otherwise share, rideshare costs such as fuel; or

(C) The leasing or rental of a vehicle, in the ordinary course of the lessor's or rentor's business, for rideshare purposes as part of a government endorsed rideshare program, or for rideshare under a contract requiring compliance with subparagraph (B) of this paragraph.

(6) 'For compensation' or 'for hire' means an activity wherein for payment or other compensation a motor vehicle and driver are furnished to a person by another person, acting directly or knowingly and willfully acting with another to provide the combined service of the vehicle and driver, and includes every person acting in concert with, under the control of, or under common control with a motor carrier who shall offer to furnish transportation for compensation or for hire, provided that no exempt rideshare shall be deemed to involve any element of transportation for compensation or for hire.

(6.1) 'Gas company' means any person certificated under Article 2 of Chapter 4 of this title to construct or operate any pipeline or distribution system, or any extension thereof, for the transportation, distribution, or sale of natural or manufactured gas.

(6.2) 'Government endorsed rideshare program' means a vanpool, carpool, or similar rideshare operation conducted by or under the auspices of a state or local governmental transit instrumentality, such as GRTA, a transportation management association, or a community improvement district, or conducted under the auspices of such transit agencies, including through any form of contract between such transit instrumentality and private persons or businesses.

(6.3) 'GRTA' means the Georgia Regional Transportation Authority, which is itself exempt from regulation as a carrier under Code Section 50-32-71.

(7) 'Household goods' means any personal effects and property used or to be used in a dwelling when a part of the equipment or supplies of such dwelling and such other similar property as the commission may provide for by regulation; provided, however, that such term shall not include property being moved from a factory or store except when such property has been purchased by a householder with the intent to use such property in a dwelling and such property is transported at the request of, and with transportation charges paid by, the householder.

(8) 'Motor carrier of property' means a motor common or contract carrier engaged in transporting property, except household goods, in intrastate commerce in this state.

(9) 'Motor contract carrier and motor common carrier' means as follows:

(A) 'Motor contract carrier' means every person, except common carriers, owning, controlling, operating, or managing any motor propelled vehicle including the lessees or trustees of such persons or receivers appointed by any court used in the business of transporting persons or property for hire over any public highway in this state and not operated exclusively within the corporate limits of any city.

(B) 'Motor common carrier' means every person owning, controlling, operating, or managing any motor propelled vehicle, and the lessees, receivers, or trustees of such person, used in the business of transporting for hire of persons or property, or both, otherwise than over permanent rail tracks, on the public highways of Georgia as a common carrier. The term includes, but is not limited to, limousine carriers as defined in paragraph (5) of Code Section 46-7-85.1.

(C) Except as otherwise provided in this subparagraph, the terms 'motor common carrier' and 'motor contract carrier' shall not include:

(i) Motor vehicles engaged solely in transporting school children and teachers to and from public schools and private schools;

(ii) Taxicabs, drays, trucks, buses, and other motor vehicles which operate within the corporate limits of municipalities and are subject to regulation by the governing authorities of such municipalities. This exception shall apply to such vehicles even though such vehicles may, in the prosecution of their regular business, occasionally go beyond the corporate limits of such municipalities. Such exception shall not include such vehicles engaged in the moving of household goods nor include passenger vans (I) having a capacity of ten persons or more, (II) conducting nonmetered transportation service and not operated by a municipality or municipal, county, or regional governmental authority, and (III) which are engaged in private for-hire transportation operating between points within the corporate limits of a municipality. Pursuant to Code Section 44-1-13, all tow trucks engaged in nonconsensual towing operations between points within the corporate limits of a

municipality shall remain subject to the jurisdiction of the commission and the municipality within which such nonconsensual towing operations are conducted;

(iii) Hotel passenger or baggage motor vehicles when used exclusively for patrons and employees of such hotel;

(iv) Motor vehicles operated not for profit with a capacity of 15 persons or less when they are used exclusively to transport elderly and disabled passengers or employees under a corporate sponsored van pool program, except that a vehicle owned by the driver may be operated for profit when such driver is traveling to and from his or her place of work provided each such vehicle carrying more than nine passengers maintains liability insurance in an amount of not less than \$100,000.00 per person and \$300,000.00 per accident and \$50,000.00 property damage. For the purposes of this division, elderly and disabled passengers are defined as individuals over the age of 60 years or who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable to utilize mass transportation facilities as effectively as persons who are not so affected;

(v) Granite trucks, where transportation from quarry to finishing plant involves not crossing more than two counties;

(vi) RFD carriers and star-route carriers which carry no more than nine passengers along with carriage of the United States mail, provided that such carriers shall not carry passengers on a route along which another motor common carrier or motor contract carrier of passengers has a permit or a certificate to operate;

(vii) Motor trucks of railway companies which perform a pick-up and delivery service in connection with their freight train service, between their freight terminals and points not more than ten miles distant, when either the freight terminal or such points, or both, are outside the limits of an incorporated city;

(viii) Motor vehicles owned and operated exclusively by the United States government or by this state or any subdivision thereof;

(ix) Single source leasing whereby a leasing company whose primary business is leasing vehicles and who operates a fleet of ten or more vehicles provides vehicle equipment and drivers in a single transaction to a private carrier. Such arrangement is presumed to result in private carriage by the shipper if the requirements enumerated below are met and subject only to the commission's transportation safety rules:

(I) The lease must be reduced to writing and a copy maintained on the leased vehicle at all times during the term of the lease;

(II) The period for which the lease applies must be no less than 30 days;

(III) The lease agreement must provide, and the surrounding facts must reflect, that the leased equipment is exclusively committed to the lessee's use for the term of the lease;

(IV) The lease agreement must provide, and the surrounding facts must reflect, that during the term of the lease the lessee accepts, possesses, and exercises exclusive dominion and control over the leased equipment and assumes complete responsibility for the operation of the equipment;

(V) The lessee must maintain public liability insurance and accept responsibility to the public for any injury caused in the course of performing the transportation service conducted by the lessee with the equipment during the term of the lease;

(VI) The lessee shall display appropriate identification on all equipment leased by it showing operation by the lessee during the performance of the transportation;

(VII) The lessee must accept responsibility for, and bear the cost of, compliance with safety regulations during performance by the lessee of any such transportation services; and

(VIII) The lessee must bear the risk of damage to the cargo, subject to any right of action the lessee may have against the lessor for the latter's negligence;

(x) Motor vehicles engaged exclusively in the transportation of agricultural or dairy products, or both, between farm, market, gin, warehouse, or mill, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer. For the purposes of this division, the term 'producer' includes a landlord where the relations of landlord and tenant or landlord and cropper are involved. As used in this division, the term 'agricultural products' includes fruit, livestock, meats, fertilizer, wood, lumber, cotton, and naval stores; household goods and supplies transported to farms for farm purposes; or other usual farm and dairy supplies, including products of grove or orchard; poultry and eggs; fish and oysters; and timber or logs being hauled by the owner thereof or the owner's agents or employees between forest and mill or primary place of manufacture; provided, however, motor vehicles with a manufacturer's gross weight rated capacity of 44,000 pounds or more engaged solely in the transportation of unmanufactured forest products shall be subject to the Georgia Forest Products Trucking Rules which shall be adopted and promulgated by the commissioner of public safety only for application to such vehicles and vehicles defined in subparagraph (A) of paragraph (13) of this Code section; provided, further, that pulpwood trailers and pole trailers with a manufacturer's gross weight rated capacity of 10,001 pounds or more engaged solely in the transportation of unmanufactured forest products shall have two amber side marker reflectors on each side of the trailer chassis between the rear of the tractor

cab and the rearmost support for the load. All such reflectors shall be not less than four inches in diameter. Such rules and any amendments thereto adopted by the commissioner of public safety shall be subject to legislative review in accordance with the provisions of Code Section 46-2-30, and, for the purposes of such rules and any amendments thereto, the Senate Natural Resources and the Environment Committee and the House Committee on Natural Resources and Environment shall be the appropriate committees within the meaning of said Code Section 46-2-30. The first such rules adopted by the commissioner of public safety shall be effective July 1, 1991;

(xi) Reserved;

(xii) Reserved;

(xiii) Vehicles, owned or operated by the federal or state government, or by any agency, instrumentality, or political subdivision of the federal or state government, or privately owned and operated for profit or not for profit, capable of transporting not more than ten persons for hire when such vehicles are used exclusively to transport persons who are elderly, disabled, en route to receive medical care or prescription medication, or returning after receiving medical care or prescription medication. For the purpose of this division, elderly and disabled persons shall have the same meaning as in division (iv) of this paragraph;

(xiv) Reserved; or

(xv) Ambulances.

(10) 'Passenger' means a person who travels in a public conveyance by virtue of a contract, either express or implied, with the carrier as to the payment of the fare or that which is accepted as an equivalent therefor. The prepayment of fare is not necessary to establish the relationship of passenger and carrier; although a carrier may demand prepayment of fare if persons enter his or her vehicle by his or her permission with the intention of being carried; in the absence of such a demand, an obligation to pay fare is implied on the part of the passenger, and the reciprocal obligation of carriage of the carrier arises upon the entry of the passenger.

(11) 'Permit' means a registration permit issued by the state revenue commissioner authorizing interstate transportation for hire exempt from the jurisdiction of the United States Department of Transportation or intrastate passenger transportation for hire exempt from the jurisdiction of the state revenue commissioner or intrastate transportation by a motor carrier of property.

(12) 'Person' means any individual, partnership, trust, private or public corporation, municipality, county, political subdivision, public authority, cooperative, association, or public or private organization of any character.

(13) 'Private carrier' means every person except motor common carriers or motor contract carriers owning, controlling, operating, or managing any motor propelled vehicle, and the lessees or trustees thereof or receivers appointed by any court whatsoever, used in the business of transporting persons or property in private transportation not for hire over any public highway in this state. The term 'private carrier' shall not include:

(A) Motor vehicles not for hire engaged solely in the harvesting or transportation of forest products; provided, however, that motor vehicles not for hire with a manufacturer's gross weight rated capacity of 44,000 pounds or more engaged solely in the transportation of unmanufactured forest products shall be subject only to the Georgia Forest Products Trucking Rules provided for in division (9)(C)(x) of this Code section;

(B) Motor vehicles not for hire engaged solely in the transportation of road-building materials;

(C) Motor vehicles not for hire engaged solely in the transportation of unmanufactured agricultural or dairy products between farm, market, gin, warehouse, or mill whether such vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer;

(D) Except for the motor vehicles excluded under subparagraph (C) of this paragraph, motor vehicles having a manufacturer's gross vehicle weight rating of 10,000 pounds or less; provided, however, that motor vehicles which have a manufacturer's gross vehicle weight rating of 10,000 pounds or less and which are transporting hazardous materials, as the term 'hazardous materials' is defined in Title 49 C.F.R., Parts 107, 171-173, and 177-178, shall be included within the meaning of the term 'private carrier'; or

(E) Exempt rideshares.

(14) 'Public highway' means every public street, road, highway, or thoroughfare of any kind in this state.

(15) 'Railroad corporation' or 'railroad company' means all corporations, companies, or individuals owning or operating any railroad in this state. This title shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that engage in business as common carriers upon any of the lines of railroad in this state, as well as to railroad corporations and railroad companies as defined in this Code section.

(16) 'Rate,' when used in this title with respect to an electric utility, means any rate, charge, classification, or service of an electric utility or any rule or regulation relating thereto.

(17) 'Utility' means any person who is subject in any way to the lawful jurisdiction of the commission.

(18) 'Vehicle' or 'motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the state revenue commissioner."

SECTION 2.

Said title is further amended by adding a new Code section to read as follows:

"46-2-22.1.

All emergency warning point to multipoint systems shall be under the jurisdiction and control of the commission, which shall have full power to regulate and determine just and reasonable rates and charges to be made by any emergency warning point to multipoint system provider for any service performed by such provider."

SECTION 3.

Said title is further amended by adding a new chapter to read as follows:

"CHAPTER 12

46-12-1.

(a) At least once every five years, the commission shall cause to be performed a management audit of each emergency warning point to multipoint system provider to determine whether it is being managed in an efficient and effective manner.

(b) The management audit provided for in this Code section shall be performed by a qualified and reputable management auditor of national reputation, to be selected by the commission from a list of not less than three such auditors, which list shall be made up by mutual agreement of the commission and the emergency warning point to multipoint system provider. The management auditor shall report the results of the audit to the commission.

(c) In the event that the commission and the emergency warning point to multipoint system provider are unable to agree on a list of management auditors, either party may petition the Superior Court of Fulton County to select, within 30 days of filing, such a list after a hearing on the petition.

(d) The audited emergency warning point to multipoint system provider shall pay for the management audit. The cost of the management audit shall be recognized by the commission as an operating expense of the emergency warning point to multipoint system

279 provider; and the emergency warning point to multipoint system provider's rates shall be
280 fixed by the commission to recover this retail expense amortized over such period as the
281 commission may direct.

282 46-12-2.

283 Municipal corporations, counties, consolidated governments, or any other political
284 subdivision of the state or any department or agency thereof shall not be required to utilize
285 the services of an emergency warning point to multipoint system. Municipal corporations,
286 counties, consolidated governments, or any other political subdivision of the state or any
287 department or agency thereof utilizing the services of an emergency warning point to
288 multipoint system and emergency warning point to multipoint system providers shall not
289 be liable for failure to deliver information over an emergency warning point to multipoint
290 system, except in the case of gross negligence."

291 **SECTION 4.**

292 All laws and parts of laws in conflict with this Act are repealed.